

**§ 4006.6 Definition of “participant.”**

(a) *General rule.* For purposes of this part and part 4007 of this chapter, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date.

(b) *Loss or distribution of benefit.* For purposes of this section, an individual is treated as no longer being a participant—

(1) In the case of an individual with no vested accrued benefit, after—

(i) The individual incurs a one-year break in service under the terms of the plan,

(ii) The individual’s entire “zero-dollar” vested accrued benefit is deemed distributed under the terms of the plan, or

(iii) The individual dies; and

(2) In the case of a living individual whose accrued benefit is fully or partially vested, or a deceased individual whose accrued benefit was fully or partially vested at the time of death, after—

(i) An insurer makes an irrevocable commitment to pay all benefit liabilities with respect to the individual, or

(ii) All benefit liabilities with respect to the individual are otherwise distributed.

(c) *Examples.* The operation of this section is illustrated by the following examples:

*Example 1.* Participation under a calendar-year plan begins upon commencement of employment, and the only benefit provided by the plan is an accrued benefit (expressed as a life annuity beginning at age 65) of \$30 per month times full years of service. The plan credits a ratable portion of a full year of service for service of at least 1,000 hours but less than 2,000 hours in a service computation period that begins on the date when the participant commences employment and each anniversary of that date. John and Mary both commence employment on July 1, 2008. On December 31, 2008 (the participant count date for the plan’s 2009 premium), John has credit for 988 hours of service and Mary has credit for 1,006 hours of service. For purposes of this section, Mary is considered to have an accrued benefit, and John is considered not to have an accrued benefit. Thus, the plan is considered to have benefit liabilities with respect to Mary, but not John, on December 31, 2008; and Mary, but not John, must be counted as a participant

for purposes of computing the plan’s 2009 premium.

*Example 2.* The plan also provides that a participant becomes vested five years after commencing employment and defines a one-year break in service as a service computation period in which less than 500 hours of service is performed. On February 1, 2010, John has an accrued benefit of \$18 per month beginning at age 65 based on credit for 1,200 hours of service in the service computation period that began July 1, 2008. However, John has credit for only 492 hours of service in the service computation period that began July 1, 2009. On February 1, 2010, John terminates his employment. On December 31, 2010 (the participant count date for the 2011 premium), John has incurred a one-year break in service, and thus is not counted as a participant for purposes of computing the plan’s 2011 premium.

*Example 3.* On January 1, 2012, the plan is amended to provide that if a vested participant whose accrued benefit has a present value of \$5,000 or less leaves employment, the benefit will be immediately cashed out. On December 30, 2013, Jane, who has a vested benefit with a present value of less than \$5,000, leaves employment. Because of reasonable administrative delay in determining the amount of the benefit to be paid, the plan does not pay Jane the value of her benefit until January 9, 2014. Under the provisions of this section, Jane is treated as not having an accrued benefit on December 31, 2013 (the participant count date for the 2014 premium), because Jane’s benefit is treated as having been paid on December 30, 2013. Thus, Jane is not counted as a participant for purposes of computing the plan’s 2014 premium.

*Example 4.* If the plan amendment had instead provided for cashouts as of the first of the month following termination of employment, and the plan paid Jane the value of her benefit on January 1, 2014, Jane would be treated under the provisions of this section as having an accrued benefit on December 31, 2013, and would thus be counted as a participant for purposes of computing the plan’s 2014 premium.

[65 FR 75163, Dec. 1, 2000, as amended at 73 FR 15076, Mar. 21, 2008]

**§ 4006.7 Premium rate for certain terminated single-employer plans.**

(a) The premium under this section (“termination premium”) applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants

in the plan, determined as of the day before the termination date, multiplied by the termination premium rate. In general, the termination premium rate is \$1,250. However, the termination premium rate is \$2,500 for an “eligible plan” under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See §4007.13 of this chapter for further rules about termination premiums.

[72 FR 71229, Dec. 17, 2007, as amended at 79 FR 13561, Mar. 11, 2014]

## PART 4007—PAYMENT OF PREMIUMS

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APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

AUTHORITY: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

SOURCE: 61 FR 34020, July 1, 1996, unless otherwise noted.

### § 4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

### § 4007.2 Definitions.

(a) The following terms are defined in §4001.2 of this chapter: Code, contributing sponsor, ERISA, IRS, notice of intent to terminate, PBGC, plan, plan administrator, plan year, single-employer plan, and termination date.

(b) For purposes of this part, the following terms are defined in §4006.2 of this chapter: continuation plan, new plan, newly covered plan, participant, participant count, premium funding target, premium payment year short plan year, small plan, and UVB valuation date.

[61 FR 34020, July 1, 1996, as amended at 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

### § 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums must be made in accordance with the premium instructions on PBGC’s Web site ([www.pbtc.gov](http://www.pbtc.gov)). Subject to the provisions of §4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

(b) *Electronic filing.* Information must be filed electronically except to the extent that PBGC grants an exemption for good cause in appropriate circumstances. (The requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply to information filed to comply with a PBGC request under (4007.10(c)) (dealing with